IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3251 OF 2003

Pravin Tarachand Doshi & anr. ..Petitioners.

Vs.

Jitendra Vallabhdas Shah & Ors. ..Respondents.

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Ms. S. Shamin i/b Shamim & Co. for the Petitioners.
Mrs. Vasanti Dighe for Respondent No.1.

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CORAM: DR. D.Y. CHANDRACHUD, J.

6th July, 2006.

P.C. :

1. According to the Petitioners the suit premises comprising of shop 5A at Lalit Kunj, M.G. Road, Ghatkopar (West), Mumbai were taken on lease by their father Tarachand Doshi. The father expired in 1972. Respondents 2 to 8 instituted R.A.E Suit 736/1602 of 1994 in the Small Causes Court for ejectment. In the suit it was contended that the business is not being carried out in the premises for a period of more than six months and that the premises were locked. Respondent No.1 took out Interim Notice 4969 of 1994 for being impleaded as a party to the suit claiming that he was a lawful assignee. It is common ground between the learned counsel that the Interim Notice was allowed. The First Respondent has also filed a declaratory suit being R.A.D. Suit

1819 of 1994 against Petitioner No.1 and Respondents 2 to 8 claiming a declaration that he is a protected tenant and for an injunction. In November 1994, the First Respondent filed Injunction Notice 5097 of 1994 in the declaratory suit seeking an interim injunction restraining the Petitioner and Respondents 2 to 8 from dispossessing him without due process of law. On 16th November, 1994 an ad interim order of injunction was passed in the said suit. The First Respondent instituted a contempt proceeding on 8th December, 1994 alleging that the Petitioners had committed a contempt of the order of the Trial Court dated 16th November, 1994 by dispossessing him. It appears that in December 1994 the First Respondent moved an application under Sections 145 and 146 of the Criminal Procedure Code in the Court of the Metropolitan Magistrate, 31st Court, Vikhroli. The Metropolitan Magistrate passed an order on 23rd December, 1994 under Section 145(1) of the Criminal Procedure Code. On the same day another order was passed under Section 146(1) directing attachment of the premises of the shop in dispute. Pursuant to the said order, the Ghatkopar Police Station effected attachment of the shop on 26th December, 1995. It has been alleged that thereafter on 4th January, 1996 the premises of the shop were willfully broken into inter alia by the

Petitioners. Contempt Petition 10 of 1995 was the result of an action which was taken up suo motu against the Petitioners, their mother Smt. Narmada Tarachand Doshi and another brother Ashok Tarachand Doshi on a report dated 19th October, 1995 submitted by the Metropolitan Magistrate. In its order dated 17th December, 1997, a Division Bench of this Court was of the view that the contemnors there including the Petitioners to these proceedings had violated the order passed by the Metropolitan Magistrate on 26th December, 1994 thereby committing contempt of Court. However, the Division Bench consisting of Hon'ble Mr. Justice A. P. Shah (as His Lordship then was) and Mr. Justice J.A. Patil was of the view that it was not necessary to form an extreme view for the reason that the Respondent contemnors before the Court had tendered unconditional apologies and that the status quo in respect of the shop premises had been restored. The contempt petition was accordingly disposed of.

2. In the meantime, the mother of the Petitioners, Smt. Narmada Tarachand Doshi expired on 2nd July, 1999. This proceeding arises out of an order passed by the Small Causes Court, in Contempt Notice 5406 of 1994 by which the contempt

notice was made absolute. The Petitioners were held to have disobeyed the order dated 16th November, 1994 passed by the Trial Court. The Petitioners were directed to be detained in civil prison for a period of three months. An appeal was preferred before the Appellate Bench of the Small Causes Court. Since there was a delay of 78 days in preferring the appeal, an interim application was taken out for condonation of delay. The Appellate Bench dismissed the application by its impugned order dated 26th February, 2003. In the meantime, it has been stated that Petitioner No.2 has already undergone the term of imprisonment. Petitioner No.1 is stated to be 58 years of age.

3. Counsel appearing for the Petitioners has submitted having regard to the fact that the Second Petitioner has already undergone detention in civil prison in pursuance of the order of the Small Causes Court and having regard to the fact that the Division Bench has accepted the unconditional apology which was tendered by the Petitioners, it would be appropriate and proper if the contempt notice is discharged and no further steps are taken.

4. It is true, as noted by the Trial Judge in the Small

Causes Court, that the breach that is alleged in these proceedings is of the order of the Trial Court dated 16th November, 1994 which was distinct from the breach that formed the subject matter of the earlier proceedings. Be that as it may, the Division Bench in its order dated 17th December, 1997 found that status quo ante had been restored and an unconditional apology had been tendered, and therefore, decided to drop the contempt proceedings. Having regard to the age and condition of the First Petitioner and the circumstance that the Second Petitioner has already undergone the period of detention as directed and the order of the Division Bench, I am of the view that no useful purpose would be served in pursuing the proceedings arising out of Contempt Notice 5406 of 1994 any further. Undoubtedly, the Petitioners have violated the ad interim order of the Trial Judge. However, having regard to the facts and circumstances of the case, and since an unconditional apology is now tendered before the Court on behalf of both the Petitioners, I am of the view that the ends of justice would be served if the contempt notice is discharged. Contempt Notice 5406 of 1994 is accordingly discharged by taking the unconditional apology tendered by the Petitioners on the record. The Petition is accordingly disposed of.